





**SUPREME COURT OF THE  
UNITED STATES**

**OCTOBER TERM 1942**

NO. \_\_\_\_\_

**CLEM CUMMINGS,      APPELLANT**

**V.**

**STATE OF MISSISSIPPI, APPELLEE**

**APPEAL FROM THE  
SUPREME COURT OF MISSISSIPPI**

**BRIEF FOR THE STATE OF MISSISSIPPI**

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**GREEK L. RICE, ATTORNEY GENERAL  
GEO. H. ETHRIDGE, ASSISTANT  
ATTORNEY GENERAL.**



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When the statute makes the doing of several acts, each a crime, in the same section, using the disjunctive or, the indictment may charge the doing of all, or any number of them using the conjunctive and may prove any one or more, but a Judgment of Conviction or acquittal of any one or more will support a plea of former acquittal or former conviction will be a subsequent prosecution.

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Norwood v. State, 182 Miss. 898, 183 So. 523; McQueen v. State, 143 Miss. 787, 109 So. 799; Clue v. State, 78 Miss. 661, 29 So. 516, 84 Am. St. 643; Brady v. State, 128 Miss. 575, 91 So. 277; Coleman v. State, 94 Miss. 860, 48 So. 181; State v. Clark, 97 Miss. 806, 52 So. 691; Jimmerson v. State, 93 Miss. 685, 46 So. 948.....	page	3
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**IN THE SUPREME COURT  
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**STATE OF MISSISSIPPI**

**APPELLEE**

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**BRIEF FOR THE STATE OF MISSISSIPPI**

This is an appeal from a conviction in the Circuit Court of Warren County, Mississippi, affirmed in the State Supreme Court, of the appellant, Clem Cummings, for violating Chapter 178, Laws of 1942. The indictment charges that Clem Cummings on or before the 9th day of July, A. D., 1942, with force and arms, in the county aforesaid, and within the jurisdiction of this court, did, then and there wilfully, unlawfully, feloniously and intentionally distribute printed matter, designed and calculated to encourage disloyalty to the United States Government, and the State of Mississippi, which said printed matter so distributed was then and there in book form, designated or entitled "CHILDREN", and said book entitled "CHILDREN" being attached hereto and made a part of said indictment as though fully copied herein \* \* \* which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States, or of the State of



Mississippi. Contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi. (R. p. 4)

The appellant demurred to the indictment, the demurrer, in substance, challenges the sufficiency of the indictment because of the constitutionality of Chapter 178, Laws of 1942, as denying the defendant his right to freedom of worship according to the dictates of his conscience, freedom of press, and freedom of speech, contrary to Sections 13, 14, 18, and 32 of the Constitution of the State of Mississippi and the First Amendment to the United States Constitution and section I of the Fourteenth Amendment to the United States Constitution (R. p. 7).

The second ground appears to be identical with the first, at least in substance. (R. 8)

The third ground of the demurrer is that Section 1 of Chapter 178, House Bill 689 of the Legislature Session 1942, is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting a denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution. (R. p. 8)

The fourth ground is that it is unconstitutional because it is too general, indefinite and permits speculation on the part of the jury and the court trying the cause, thus constituting a dragnet both on its face and as construed and applied, contrary to the said Section 14 of Article 3 of the Mississippi Constitution. (R. p. 9)

The fifth ground is that Section 2 of the Act is unreasonable and in excess of the police powers of the state. However, this section is not involved in the present prosecution, the indictment being drawn on



Section 1 of Chapter 178, Laws of 1942, House Bill 689 of the Legislature Session. (R. p. 9)

The sixth ground is based on the denial of equal protection of the laws in that it discriminates between classes. (R. 9)

The seventh ground is that the indictment fails to allege any facts or circumstances showing commission of any public offense or the violation of any laws of the state. (R. p. 9.) The demurrer was overruled and the appellant filed an alleged motion to quash, setting up indentially the grounds set up in the demurrer and on trial of the case, at the conclusion of the state's evidence, moved for a directed verdict and also moved for a directed verdict at the close of the whole case, which motions were overruled. There was a conviction and the court below sentenced the appellant to imprisonment in the State Penitentiary for the duration of the war, but not to exceed ten years. (R. p. 34)

It is regrettable that the indictment did not select the provisions deemed by the state to constitute a violation of the law contained in the book "CHILDREN". The entire book consists of 368 pages, but there was no demurrer or other challenge of the sufficiency of the indictment upon this specific ground.

The rule is that where a statute makes the doing of several acts, each a crime in the same section, the indictment charge the doing of all of them, using the word and instead of or and prove any of them. *Brady v. State*, 128 Miss. 575, 91 So. 277; *Coleman v State*, 94 Miss. 860, 48 So. 181; *State v. Clark*, 97 Miss. 806, 52 So. 691; *Jimmerson v State*, 93 Miss. 685, 46 So. 948; *Clue v State*, 78 Miss. 661, 29 So. 516, 84 Am. St. 643; *McQueen v. State*, 143 Miss. 787, 109 So 799; *Norwood v. State*, 182 Miss. 898, 183, So 523.



The constitutionality of Chapter 178, Laws of 1942, on its face is raised by the demurrer; and any act which it forbids may be considered regardless of the proof in the record on this charge. The whole literature, and all of the actions shown in the record may be looked to. The statute does not command any person to salute the flag. It does not require acts, but it prohibits acts which the Legislature thought dangerous and subversive of the national defense and the public welfare as said by Judge Roberds, in the controlling opinion in this case: (11 So. (2) 683)

" \* \* \* the Mississippi statute does not attempt to coerce, control or direct, in the slightest degree, the conscience or religious beliefs of any person. So far as that statute is concerned, one may believe in and worship a Divine Being, or any ideal or thing the worshiper may think divine, under the name of Jehovah, or any other name; or, on the other hand, he is free to worship satan, a golden calf, any animal or thing, or any image of anything, real or imaginary. What the statute does prohibit is the going about into the homes and among the people, and, by affirmative teaching and action, attempting to persuade the people, at this tragic time, to have disrespect for and disloyalty toward the flag and the state and the nation, and to evince an attitude of disobedience to the laws of the land, thereby undermining the war efforts of the state and national governments. The statute does not command any one to salute the flag or do anything else; it simply demands that people shall not engage in certain affirmative activities which the sovereign state, through its legislature, has determined are harmful to other people and to the public welfare



and to the defensive war efforts of the state and nation."

I refer also to the opinion of Justice Griffith, concerning as properly characterizing the purpose and conduct of the appellant. He says: 11 So. (2) 684

"Teaching that to salute the National flag is an act of idolatry, and that the consequences of such an act is eternal damnation, is a pointed symptom of the disease which lies at the bottom of the subversive and destructive doctrines which this appellant and his co-workers are seeking to spread in our state in this time of war, the result of which means everything to us as a state and nation. We must look behind technical obscurities and to the substance of things. If appellant may maintain the right so to teach it and urge it among the soldiers and marines wherever access may be had to them; and if our soldiers were to refuse to salute the flag wherever unfurled, and particularly when the military regulations require them to do so, then we would have an army and a navy which would be entitled to no respect at home or abroad; and whoever teaches that which, if followed, would bring our armed forces into such disrespect ought well to be in the penitentiary, as the statute appropriately declares."

The statute in nowise interferes with religious opinion or proper religious practices. Criminal acts cannot be justified by religious beliefs. But acts hurtful to the public needs in time of war may be prohibited and punished. The state may at all times require the loyalty of its citizens and may teach the principles of its government, and respect for its institutions and its flag.



With these observations at this place, I turn now to a full statement of the facts, and will then discuss the constitutional features of the case.

\* The whole book is before the court, being an exhibit to the indictment and also an exhibit to the testimony. On the trial of the case, pages 314 and 315, down to about the middle of page 315, were offered in evidence by the state, which matter reads as follows (The quotations and page references are to the book CHILDREN):

"Satan knows that his time is short, and therefore he is desperately trying to turn all persons, including the children, against God. (Revelation 12: 12,17) Therefore Satan influences public officials and others to compel little children to indulge in idolatrous practice by bowing down to some image or thing, such as saluting flags and hailing men, and which is in direct violation of God's commandment. (Exodus 20: 1-5) That is why in the last few years rules are made and enforced in the public schools compelling children of the Jonadabs, who are in a covenant to do God's will, to indulge in the idolatrous practice of flag-saluting and hailing men. It is the influence of that subtle foe, the Devil, that has brought about this state of affairs, and now Satan's agents cause great persecution to be brought upon the parents and the children who insist on obeying the commandments of God. This makes the way of both parents and children more difficult, but at the same time it puts a test upon them and affords them the opportunity to prove their obedience and to maintain their integrity toward God and his King. Both parents and children who are now consecrated to do the will of God should rejoice in their privilege of hearing the reproaches that fall



upon them because of their faithfulness to the THEOCRACY under Christ. If they remain true and faithful to the Lord amidst such great persecution and opposition they may be fully assured that the Lord will shield and protect them and give them his great blessing through Armageddon and take them over into the new world to serve with joy forever. The Lord never forgets or forsakes those who are faithful to him."

Other provisions were inquired about in the course of the examination of the witnesses and the whole book was introduced in evidence and was before the jury. The book is so composed and written as to deceive or influence the Juvenile mind and also the mind of illiterate and unlearned persons, and, taken as a whole, I think, it is clear that the book violates the provisions of the statute. Furthermore, the whole book should be read to judge of its purpose. When this is done it is clearly seditious.

I will refer to a number of pages in this book, which I think is material for the Court's consideration. Of course, the Court will consider the book in its entirety in determining the effect of the teachings of the book. On page 303, beginning about the middle of the page, there is a statement in the book as follows:

"The demons, under the command of the chief of demons, Satan the Devil, had in Noah's day completely overrun and debauched all the human race aside from Noah and his family. Likewise today the demons, under the influence, power and control of the Devil, now influence and control all the nations of the earth aside from those who have taken their stand firmly on the side of THE THEOCRACY."



The effect of this is to teach that all governments and officers in control of them are under the influence of demons, whose chief is Satan the Devil, and consequently that it is an evil and unrighteous government.

I desire to call the Court's attention to the matter contained in the book, under the heading, "Human Laws," pages 271 and 272 and the lower paragraph of page 273:

" \* \* \* Suppose the state enacts a law, and the keeping of that law by a child who is in covenant with God would make the child an idolator and hence a violator of God's law, what shall the child do? God's law provides that all who practice idolatry shall be everlastingly destroyed. Human laws, that is, laws of nations, punish those who disobey their laws, and sometimes the punishment is death. As to what a person in a covenant with God shall do under such circumstances Jesus gave the correct answer \* \* \*

"All human laws that are valid derive their authority from God's law. One must choose to obey either the law of man or the law of God, and those in a covenant with God and having agreed to do His will must obey the law of God, if they would live.  
\* \* \*

"Parents are often required to suffer punishment because they teach their children the Word of God, but such suffering does not deter them from teaching the child what God has commanded. If the parents or children are punished by the state for rendering obedience unto God's law, then that suffering is for righteousness' sake." \* \* \*



"If the child of God is put to death because he obeys the law of God, which is supreme, God will not forget that faithful soul but will raise him up out of death and grant to that faithful one life everlasting. Fear God, and live."

Also, to matter contained on page 270, beginning at the second paragraph and extending to the third paragraph:

"The parents who have agreed to do the will of God must teach their children to love God: 'And thou shalt love the Lord thy God with all thine heart, and with all thy soul, and with all thy might. And these words, which I command thee this day shall be in thine heart: and thou shalt teach them diligently unto thy children and shalt talk of them when thou sittest in thine house, and when thou walkest by the way, and when thou liest down, and when thou risest up. And thou shalt bind them for a sign upon thine hand, and they shall be as frontlets between thine eyes.'"

Also, to a part of page 267, under the title "WHERE" extending from said word "Where" about the middle of the page to the bottom thereof:

"Shall the child be sent to the Sunday school of some religious organization to there receive instruction? No; for the reason that religious organizations do not teach the Bible, which is the way of righteousness. If the parents love their children they must and will instruct them at home in the Word of God and will take their children with them to the class or company where the Bible is carefully



and systematically studied, and there require the children to sit quietly and learn \* \* \* ”

I also desire to call the Court's attention to the second paragraph on page 266 of said book:

“Generally those of the world who are parents desire to provide their children with a college education and a training in religion, commerce, and politics, with the ability to make money and shine in the world. Good that is enduring does not result from such worldly teaching.”

Also, to page 260, at the second paragraph thereof:

“If one desires to be taught in the right way he must not follow the teachings of men, which teachings are contrary to God's Word, nor even lean to his own theories. To prate about, talk about or participate in such things as religion and evolution, is vain babbling.”

I also call the Court's attention to page 259, near the middle of the page and extending to the last paragraph of said page:

“Religious ceremonies produce no good results and are in vain and injurious, because contrary to the Word of God. Note the clear distinction made between such religious ceremonies and the truth. ‘Study to shew thyself approved unto God, a workman that needeth not to be ashamed, rightly dividing the word of truth.’ ”

Also to the matter contained on page 257, beginning at the second paragraph and extending to the bottom of the page.



"Marriage and childbearing is God's arrangement for humankind that shall live on the earth. Parents who have made a covenant to do the will of God and who have children are properly said to be 'in the Lord,' within the meaning of the foregoing text. Their children, therefore, must be taught by the parents in the Lord to be obedient to the Lord and to their human parents as they follow the Lord. Such parents who are in the Lord, must be 'taught of God' and obey him. \* \* \* It follows that they should require their children to be obedient to His commandment or rules, which the Lord has put in His word. Upon all parents who are in a covenant to do God's will there is laid a duty and specific obligation to teach their children the Word of God, and it is the duty of the children to obey their parents who give such instruction."

I would also like to call the Court's attention to the matter contained on page 249, using the following language:

"All the physical facts that have come to pass show that the end of the world of Satan's rule without interruption began in 1914, when Jehovah God sent forth Christ Jesus to begin his reign. \* \* \* From 1918 onward the persecution of the Lord's servants on earth increased. In answer to the above question as to conditions Jesus spoke the prophecy which must apply to and be fulfilled upon his faithful servants on earth from and after 1918 until Armageddon. To them Jesus says: 'Then shall they deliver you up to be afflicted, and shall kill you; and ye shall be hated of all nations for my Name's sake.' Matthew 24:9.'"



From this paragraph and throughout the literature at intervals the book and literature refer to the beginning of Christ's rule in 1914 and taking full effect in 1918, but when and where and through whom such rule is exercised does not appear. The literature treats all human government, other than their theory of THEOCRACY as being wrongful and controlled by demons.

This literature also teaches that the flag of the United States represents a government controlled by demons and that such saluting the flag is idolatry, punishable by destruction. What could bring the flag into greater contempt? What could create greater contempt and stubborn refusal to salute?

I desire to call the Court's attention to matter contained on page 245 and the top of page 246, under the title of "Religionists":

"The unbroken line of Bible testimony shows that at all times those who have indulged in reproaching the name of Almighty God and Christ and in the persecution of God's servants have been and are those persons who indulge in and practice religion. This is further proof that religion is demonism and religion is brought into action by the chief of demons, Satan, for the very purpose of bringing reproach upon the name of God and Christ and all those who serve Him. For this reason, Jehovah warned his chosen people that they must shun religion or demonism, because the same is a snare unto all who attempt to serve righteousness (Deuteronomy 7:1, 16). The nation of Israel yielded to religion, disobeying God's commandment, and that nation suffered destruction. It was the scribes, priests and Pharisees, the religious leaders of Israel, that persecuted the prophets of God, and this Jesus



plainly told them, as set forth at Matthew 23:33-36."

I also desire to call the attention of the Court to the matter contained at the bottom of page 241 and through to page 242, to the last paragraph on said page 242:

"What is meant in these texts just cited by the term 'the world'? The people and nations of earth that are under the influence of demons, of which Satan the Devil is the prince or chief of demons, constitute the world that lies in the wicked one. (I John 5:19 Diaglott). The world is made up chiefly of three ruling elements, to-wit: Religion, Politics, and Commerce; and all persons who thus rule practice some kind of religion, which is demonism, because their practice is contrary to God's Word. The world, therefore, consists of the organization of the peoples of earth into forms of government which are dominated by the power and influence of the invisible overlord, Satan. The new world will consist of all people who survive Armageddon, and who love righteousness and hate wickedness, and such will live on the earth under the supervision and control of the invisible righteous overlord, Christ the King. Thus it is seen that all people and all nations must now be separated or divided into two classes, that those who love righteousness and who serve righteousness shall live, and that those who choose wickedness shall be destroyed. 'The Lord preserveth all them that love Him; but all the wicked will He destroy. Psalm 145:20.'"

Also to page 236 of said book and down to about the middle of page 237:

"There are many religious organizations in the earth today, not one of which advocates and sup-



ports THE THEOCRACY. All of them teach and follow the traditions of men, which is against the Lord and all are an abomination in God's sight. There is a great and old religious institution that during the past 1500 years has spread all over the earth and has drawn into its clutches millions of persons, many of whom are very sincere, yet blind to the truth, and these are held in restraint by reason of the influence exercised over them by religious leaders. Such persons of good-will, God will see to it, shall have an opportunity of hearing the truth, that they may escape. That great religious institution is closely allied with commerce and politics and is a part of Satan's world. That great religious institution uses constantly as its slogan these words: 'The gates of hell shall not prevail against us.' Furthermore they say: 'When God's wrath comes, it will not touch us, because we have made a covenant with death, and an agreement with hell.' The leaders of that great religious institution are proud, austere and scornful men that rule within their institutions and exercise a powerful influence outside thereof. God, through his prophet and for the benefit of those who are held in restraint by such great religious institution, answers the boastful words of those scornful men in this manner: 'So shall be wiped out your covenant with death and your vision with hades (Sheol) not stand; when the overflowing scourge sweepeth past, then shall ye be thereby beaten down: as often as it sweepeth past, it shall take you away, for morning by morning shall it pass along, by day and by night; and it shall be nothing less than a terror to make out the message.' " Isaiah 28:18, 19, Rotherham.

I also call the attention of the Court to the matter



contained on page 232, under the heading ,“Strange Work” and continuing on page 233:

“Jehovah’s Witnesses and companions go from house to house calling the attention of the people to the Scriptures concerning Jehovah and his kingdom. That message of God’s Word necessarily exposes religion as the instrument of Satan, used to deceive the people, and against which Almighty God has repeatedly given warning to those who will hear. While the apostles were on the earth they shunned religion, warned the people against it, and preached this gospel of the kingdom of God. The apostle Paul, particularly, pointed out that religion is demonism. (Acts 17:22, Moffat, Rotherham; Galatians 1:6-16. Within a few years after the apostles had passed away professed Christian men, taking the lead in Christian organizations, fell victims to religion and religious practices and taught traditions of men rather than God’s word. They mixed God’s Word with their traditions, and thus the people were easily deceived. That practice continued for centuries and is carried on to this day. Then in due time God sent his Messenger, Christ Jesus, to prepare the way before Him (Malachi 3:1); and doing such work, the Lord called out from religious systems those sincere persons who desired to see and looked for the coming of the Lord and his kingdom in glory. It was those faithful ones who, being tested at the temple, became Jehovah’s Witnesses of modern days, and such the Lord sends forth to preach ‘this gospel of the kingdom’ as a witness to the nations of the earth before the final end of Satan’s organization. The message of the Lord, therefore, discloses that religion, which is practiced by the denominations, is demonism and the religionists



are blinded by the influence of the enemy and cannot see the truth. The Lord warns all sincere Christians to flee from religion and to serve God and Christ the King. He warns them that the day of his wrath against all ungodliness is near, and therefore the people must abandon religion or demonism and serve God and His kingdom if they would be saved."

The attention of the Court is also called to the matter contained on page 227, beginning with the second paragraph and extending to near the bottom of the same page:

"In modern times the colleges and universities, and particularly so-called 'theological schools', teach anything and everything but the gospel of God's kingdom. There are numerous religious denominations, which preach their own doctrines based upon the traditions or teachings of men. Prior to the coming of the Lord Jesus to the temple for judgment in 1918 many consecrated persons who were preaching to the people of and concerning His second coming were known as Millennial Dawnites, or Russellites, or International Bible Students, and other like sectarian names. But when the Lord Jesus cleansed the temple and the approved ones were sent forth to 'offer unto the Lord an offering in righteousness,' God separated His faithful servants from all others. The approved ones, brought into the temple, were made a part of Zion, the elected organization of Jehovah; and to such the Lord says: 'For Zion's sake will I not hold my peace, and for Jerusalem's sake I will not rest, until the righteousness thereof go forth as brightness, and the salvation thereof as a lamp that burneth.' "



I also desire to call the Court's attention to the matter contained on page 225, beginning near the top and extending down on said page to the heading, "Ordained".

"So necessary and important is it to be a witness for Jehovah that each one who agrees to follow in the footsteps of Jesus is admonished to lay aside every weight, that is, everything that hinders the full performance of his duty to serve God; also that he must put aside the sin that 'doth so easily beset' every creature, which sin is religion, because it is so very easy to fall under the influence of religion. This great sin, the Scriptures declare, must be laid aside and the Christian must become a faithful and true follower of Christ Jesus, and, as such, be a faithful and true witness of Jehovah God."

Also to the matter contained on page 221, under the heading "Jehovah's Witnesses," and extended down to page 222 to the heading "Jesus":

"The name 'Jehovah's Witnesses' means but one thing, to-wit, that each one is to bear witness for Jehovah, the Almighty God, and for none other. They are Jehovah's witnesses, and not members of some sect or cult as the Devil would have others believe. They are selected by the Lord God. They are not subject to the control of human organizations or human power. Their allegiance is to Almighty God. They must obey His commandments and are responsible to God for their action.—Romans 14:4.

"This wicked world is now in the 'last days' thereof. These are 'perilous times' and the day for the execution of the wicked is just at hand and the



Devil knows that his time is short. (2 Timothy 3:1; Revelation 12:12) 'The battle of that great day of God Almighty,' which shall destroy Satan's organization and all wickedness, is about to be fought. (Revelation 16:13-16). In these last days God has on the earth a comparatively small number of persons who are really devoted to him and his THEOCRATIC GOVERNMENT, and who now bear testimony to the name of God and His kingdom. The Devil would have all believe that this small company of faithful servants of Almighty God constitute a religious sect or cult following the lead of some man. No human power or organization could lead or control the witnesses of the Most High God. Even some countries, which are under the power and control of demonism, now declare by law that Jehovah's Witnesses are illegal. Such worldly organizations show complete ignorance of the purpose and power of Almighty God. No earthly government or power has any authority to declare Jehovah's Witnesses illegal; and in doing so such nation commits the rankest blasphemy and in due time shall receive a just recompense from the Lord's Executioner."

I would like to call the Court's attention to the matter contained on page 202, beginning about the middle of the page, at the second paragraph, and extending to about the middle of page 203, to the second paragraph on page 203:

"As the little flock must first exercise faith in God and in Christ Jesus before being called, even so the 'great multitude' must have faith in God and in Christ Jesus before they can take their stand on the side of the THEOCRATIC GOVERNMENT. Men



having the desire to be on the side of God and His kingdom begin to seek the way of righteousness, which is God's appointed way for all those who shall ever receive life everlasting. Learning that Jehovah is the Almighty God and Christ Jesus is the Redeemer of all who obey Him, such persons of good-will begin to exercise faith by trusting in Christ Jesus as the Redeemer, and by agreeing to do the will of God and of Christ. The ransom sacrifice is now available for all such, who believe on the Lord Jesus Christ, that His precious blood is the purchase price of mankind who obey him. Note that the Scriptures say that Christ Jesus is the 'author of eternal salvation unto all them that obey Him.' (Hebrews 5:9). All who obey the Lord must first take their stand firmly on the side of Christ Jesus the King and then continue to be obedient to God's law as announced by the King."

Also to the language on page 198, containing the following:

"All nations have some kind of religion which is a reproach upon the name of God. The controlling or ruling elements of the nations are, to-wit, religious, political and commercial. Such ruling powers have willfully violated or broken God's 'everlasting covenant' concerning the sanctity of life, and God declares His purpose to punish them for the same."

I also desire to call the Court's attention to the matter contained on page 196, beginning at the word, or heading, "Refuge" and extending to the last paragraph on said page:

"Any ceremony or practice indulged in, and which



is contrary to the will of Almighty God, is religion, because such is always prompted by the chief of demons, Satan, Nazism, Communism, Fascism, and suchlike, are against God, and their practices are religious. The religious institutions called 'church denominations' teach doctrines that defame God's name and oppose His kingdom; for instance, such doctrines as the immortality of all souls; conscious suffering of the dead in 'purgatory' or 'hell torment'; the doctrine concerning Peter as the foundation of the church, and that he has successors on earth; the doctrine of worshiping images, and suchlike."

Also to the following language on page 194, under the heading "Tribulation":

"Christ Jesus was enthroned as King in 1914 and came to his temple in 1918, and from that time onward tribulation upon the earth has continuously increased, and in that time the Devil has done all within his power to turn the people away from God and His kingdom."

Is this not likely to cause disloyalty to this country and its institutions and its flag?

I would like also to call the attention of the Court to the following language on the same page (p. 194).

"They want something different from the husks which they have been receiving from religious institutions."

I desire to call the attention of the Court to the language on page 186 and 187, beginning with the heading "Identification" and extending down to the last paragraph on page 187. Also to the following language appearing on page 182 of the said book:



"They will not be a part of the Holy City, or THEOCRATIC GOVERNMENT, because that is spiritual; but they will occupy the high position of visible representatives of the Holy City, THEOCRACY, and will govern or rule the people of the earth, and all the people will look to them to receive instruction from them."

This language is furthering the theory that there is no rightful government other than the THEOCRACY.

I wish to call the attention of the Court to the language on page 179, beginning near the bottom, which reads as follows:

"Therefore The THEOCRATIC GOVERNMENT, the Holy City, will always be invisible to human eyes, but will exercise absolute control over all things in the earth."

And under the heading "Visible" I invite the Court's attention to the following language:

"When God set up His typical theocracy with Israel and ruled over Israel as his chosen people, none of the Israelites saw Him; yet they observed His power."

The purport of this and other language is that the reign of Jesus Christ on earth began in 1914, but that Christ was invisible, ruling through visible agents. This is the old doctrine of ruling divine right, regardless of the consent of the governed which the founding fathers placed upon our government.

I desire further to call the attention of the Court to the language at page 178, beginning about the mid-



dle of the page and extending to the heading "Invisible" on page 179, for the purpose of showing the nature of the contentions of the proponents of the Jehovah's Witnesses organization:

"Faithful men of old, from Abel to the last one of the prophets, cannot have a part in the 'first resurrection', for the reason that they died before the heavenly way was opened and before anyone was called to the heavenly kingdom. The life of those faithful men shall be forever human on the earth. They have a better 'resurrection', however, than those of the human race in general have who are favored in the general resurrection. Those faithful men of old had their trial of faith before the purchase price or ransom was made available, but they had full faith in God's promise and they shall receive the benefit of the ransom sacrifice because of their faith and faithfulness. Other human creatures, that lived on the earth for a season and died, are held in the memory of God and shall be resurrected, but not on equal terms with those faithful men of old who received God's approval before they died."

I also desire to call the Court's attention to the following sentence on page 177:

"John the Baptist was one of the great prophets, and he can never be in heaven, because he had died before the crucifixion of the Lord: 'Verily I say unto you, Among them that are born of women there hath not risen a greater one than John the Baptist: notwithstanding, he that is least in the kingdom of heaven is greater than he.' Matthew 11:11."



"All those men died and went out of existence into the grave, or 'hell', but all are held in the memory of Almighty God, and whom He will resurrect from the dead in His own due time and according to His promise. Those men had faith in the resurrection, and therefore they endured the great fight of affliction even unto death in order 'that they might obtain (the) better resurrection.' Hebrews 11:35."

I wish to call the Court's attention to matter contained on page 70, under the title "Where are the Dead?" and extending down to the bottom of page 71 and at the top of page 72:

"When Adam died, where did he go? Being a willful wrongdoer, he was destroyed. He chose to serve the Devil and, being wicked, he suffered destruction as the judgment of Almighty God provides. (Psalm 145:20). Did not Adam's soul survive somewhere? No; for the reason that Adam did not possess a soul. Adam was a soul, a man, a breathing creature, and when he died it was the soul that died, and that meant everything concerning Adam. Adam, therefore, went completely out of existence. "The doctrine of the 'inherent immortality of all souls' is a lie, the great lie first told by the Devil, 'that old Serpent', for the very purpose of deceiving mankind and bringing reproach upon the Almighty God. That lie of the Devil brought about the death of Adam and millions of others since. Hence Jesus said of the Devil that 'he was a murderer from the beginning, and abode not in the truth, because there is no truth in him.'"

I wish also to call the Court's attention to matter contained on page 333, beginning about the middle of



the page and extending to the bottom of the page, showing the contention of Jehovah's Witnesses, that the Theocratic government began in 1914 and 1918 and showing that they teach that there is no rightful government other than the Theocratic government:

"The nations that have called themselves 'Christians' or 'Christendom' have been before the Lord Jesus the Great Judge for judgment since the coming of the Lord Jesus to the temple in 1918. The undisputed facts show that all such nations called 'Christendom' are now properly labeled as 'backsliders', because not one of those nations now advocates or supports the kingdom of Jehovah God under Christ the King. On the contrary, all nations are against God and His kingdom and propose to rule the world by selfish men. The founders of the United States of America fled from religious persecution in Europe and located in America, \* \* \* ."

Also the matter contained on page 342 showing the same theory, beginning with the heading "Vindication" and extending to the bottom of the page:

"Soon the 'princes' and the 'great multitude' will be associated with that holy nation in carrying out Jehovah's purpose. The THEOCRATIC GOVERNMENT is of greatest importance because that government will fully vindicate Jehovah's name. God ministers salvation to life through that government, and there is no other possible means of obtaining life everlasting. \* \* \* Salvation is not for the wicked at any time. 'Far from the lawless is salvation, for thy statutes have they not sought.' Psalm 119:155, Rotherham."



I also desire to refer to matter contained at the top of page 325, reading as follows:

"At the appearing of the Lord Jesus at the temple in 1918 He judged His people and separated the approved ones from the others and sent forth these approved ones as witnesses to the name of Jehovah 'that they (might) offer unto the Lord an offering in righteousness' to-wit, the praise of their lips. Malachi 3:1-3, Hebrews 13:15."

The purpose of these quotations and references in the book entitled "CHILDREN" is to show that the teachings of the appellant and those he serves is that there is no rightful government existing since 1914, except the alleged THEOCRACY GOVERNMENT, and just who is in charge of that and where the temple is and what evidences there exists of such government is uncertain. However, it is certain that they do teach that the present government of the United States is wrongful: that it is controlled by demons and that the flag represents demonical government; that it is idolatry to salute the flag because it represents something other than THE THEOCRACY and that it is some sort of substitute for the rule of THEOCRACY.

By Chapter 155, Laws of 1942, the legislature required all boards of trustees of tax supported free public schools and all other state supported schools of the state of Mississippi are authorized and hereby directed to instruct and require teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once a week during the school year and sets out the pledge of allegiance as follows:



"I PLEDGE ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA, AND TO THE REPUBLIC FOR WHICH IT STANDS, ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL."

This is in harmony with Chapter 435 of 56 Statutes U. S. approved June 22, 1942, U.S.C.A. Title 36, Sec. 171-178.

The state clearly has the right to teach the children of the state loyalty to their government and to the flag which symbolizes it. The flag is not a representative of any false God, any idol, or any image within the prohibition of the Bible, forbidding the worship of other Gods than the true God. The state has the right to require of its citizens loyalty and service and allegiance and no belief contrary to the power of the state in the lawful scope of its police powers can be ignored on the ground that it is contrary to the teachings of the Bible.

The constitutional provisions relied on by the appellant permit every person to have their own religious belief and is not limited to the Bible or the Christian religion, or to any denomination thereof, or to the Jewish religion, but to every religion whatsoever.

The power of the state to make laws is not limited any more than the necessity of giving effect to the various provisions of the Bill of Rights are concerned and all the authorities as will hereafter be shown draw the distinction between a **religious belief** and **actions taken by the individual** and show that the constitutional provisions are religious freedom and



freedom from restraint, known as freedom of speech and of press and of assemblage.

I desire to call the Court's attention to *George Reynolds v. United States*, 98 U. S. 145, 25 L. ed. 244; *McIntosh v. United States*, 283 U. S. 605, 75 L. ed. 1302; *Schenck v. United States*, 249 U. S. 47, 63 L. ed. 470; *Schwimmer v. United States*, 279 U. S. 644, 73 L. ed. 889; *Hamilton v. Regents University*, 293 U. S. 245, 79 L. ed. 343; *Nichols v. School Board* 110 A.L.R. 377, 7 N.E. (2nd) 577; *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 84 L. ed. 1375.

One of the most recent cases bearing on the subject is the case of *Rosco Jones v. City of Opelika*, and three other similar cases from other states, reported in 86 L. Ed. 1691 page 584, of 216 U. S. Reports, wherein it was held:

"Constitutional rights are not absolute rights existing independently of other privileges protected by the same organic instrument."

"The exercise of the constitutional rights of freedom of religion and freedom of speech and press may properly be limited by the appropriate legislative body to times, places, and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and order."

It is also held in the same case:

"A state or municipality may, without violation of the constitutional guaranties of freedom of religion and freedom of speech and press, exact a reasonable and non-discriminatory license fee from religious adherents engaged in the sale of religious books



and pamphlets through the ordinary methods used in commercial canvassing."

Every constitutional right has its limitations and is subject to reasonable regulations by the legislature of the states and by congress within the jurisdiction of the Federal government. It was never the purpose of the Bill of Rights to prevent appropriate and reasonable regulations designed to secure the public peace, health, safety and general welfare.

We come now to a consideration of Chapter 178, as applied to the present offense by the appellant. The preamble of the said statute show that in the opinion of the legislature the situation developed by the war required unity in all the people of the state and that the time had come in which the public safety and peace required restraints upon actions that in peace times might be lawful. It is well known that in war there is grave danger of disuniting the people, whereas there should be complete unity of thought and action as far as it is possible to be obtained in preserving the security of constitutional government from destruction by the dictatorial governments with which we are at war and who are powerful in all the essentials of war, presenting to us a situation of grave danger requiring the surrender for a limited period of time of some of the peace time rights that we have in times of peace.

Section 1 of Chapter 178, which governs the present prosecution as applicable to the present situation reads as follows:

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach,



teach, or disseminate any teachings, creed theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature \* \* \* or by distribution of any sort of literature, or written or printed matter, designed and calculated to encourage \* \* \* disloyalty to the government of the United States or the state of Mississippi, \* \* \* or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment, etc."

By section 5 of the Chapter, the act is limited to the duration of the present war.

It has long been the policy of the state to display the flag in public schools and to have the lessons of patriotism and loyalty to the principles of our government taught in the schools. Many years ago civics was added to the curriculum of the public schools and in 1916 the legislature enacted a statute that required all the boards of trustees of public schools of the state to have the flag erected near the building or displayed within the building and prohibited by law disrespect by word or act for the flag of the country. See Code 1930, Sec. 930 (bringing forward Ch. 118, Laws of 1916).

By Chapter 59 of the Laws of 1935, Section 6544 of the Code was amended, which had been in existence from 1924, so as to require the schools to display the flag and to teach the meaning and uses of the flag and the lessons of patriotism and principles of the government to all students, such lessons should be taught not less than once in each week. See Laws 1924, Chapter 283.



By Section 6630 of the Code of 1930, it was made the duty of the trustees of each school to see that these laws are complied with. It is not competent therefore for any person to teach children to disregard these statutes, regardless of what they may believe about the rightfulness of such action. The flag is in no sense, properly considered, representative of any divinity, unless the state itself be treated as a divine institution, as taught by the Christian scriptures. However, it is the government and is a necessary institution for the welfare of the race and for the protection of society from the defamation of both individuals and nations. See *Halter v. Nebraska*, 205 U. S. 34, 46, 51 L. ed. 696-701 27 S. Ct. 419, 10 Anno. Cas. 525, Affirming 74 Nebr. 757.

I desire to quote here from an article appearing in the *Bill of Rights Review*, Fall No. 1941, at page 152, entitled "OUR FLAG. ITS SIGNIFICANCE," reading as follows:

"Our Flag! The most beautiful in design and symbolism in all the world. As it floats out into space, caressed by the breezes that blow, it symbolizes a glorious delivery from the oppression and suffering back of the Colonies; back of the Declaration of Independence; and back of the Constitution which moulded into form our great Nation, known to all the world as the United States of America.

"It stands as the Emblem of Religious and Civil Liberties.

"To pledge allegiance to that flag and to the Republic for which it stands, in no manner whatsoever transcends one's religious liberty.

"Religious liberty is one of the most important, if



not the very first motive and objective of all the suffering and deprivations endured in order to obtain that freedom.

"We reverence the Bible as the Word of God, but we do not worship it. It teaches us about God as our Creator and the Heavenly Father, who loves and cares for His own.

"We do not reverence the flag in the same sense that we reverence Deity. We salute, honor and respect our flag as the emblem of all that entered into the Birth of our Nation, and of the very foundation upon which our Religious and Civil Liberties rest. It stands for that which secured and protects our Religious Liberty, and that in itself is a recognition that one's Religious Liberty is above all else.

"In countries where all liberty has been taken away from the people, they are made to appreciate what it means to have a flag which really stands for something; which insures the right to worship God unmolested. Let us ever remember, however, that our flag is in no sense whatsoever an image to be worshipped; nor is it a likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; and to salute that flag in a beautiful patriotic gesture is in no sense a bowing down to or worshipping it or that for which it stands.

"To respect our Flag and to salute it, as I confidently believe all true Americans are instinctively glad to do and to pledge allegiance to the Republic for which it stands, comes from a noble human nature and citizenship."



In the case of *Minersville School District v. Gobitis*, 84 L. Ed. 1375, 310 U. S. 586, the Supreme Court of the United States in a well reasoned and elaborate opinion considered the right of the state to require students in public schools to go through the ceremony of saluting the flag and held that it in no wise conflicted with any religious belief properly understood in the constitutional sense. That case was not only argued by the Gobitis' children and father, but a brief was also filed on behalf of the Gobitis children by the Civil Liberties Union and by the Bill of Rights Committee of The American Bar Association who filed briefs as *amicus curiae* in addition to the able brief filed by Judge Rutherford and Mr. Covington. The case was most maturely considered and the right of the public to have the flag saluted was upheld. The question was not entirely new to the Supreme Court of the United States at that time nor to the other courts of the country.

In *Nichols v. Lynn*, 7 N.E. Second Series, 577, 110 A.L.R. 377, it was held in an able opinion by the Massachusetts Supreme Court that requiring the flag to be saluted in a ceremony for that purpose in the schools was not an infringement in any sense upon the constitutional guaranty of the freedom of religion.

In the case of *Leoles v. Landers*, 184 Ga. 580, 192 S.E. 218, it was held that a similar statute of Georgia did not violate the constitutional guaranty of religious freedom. An appeal was taken from that case to the United States Supreme Court and in 302 U. S. 656, 82 L. Ed. 507, certiorari denied. Review was also denied. In the case of *Herring v. State Board of Education*, 117 N. J. L. 455, 189 Atlantic 629, and *Peoples v. Sandstrom*, 179 N. Y. 523 to 530, 19 N. E. (2nd) 840, 842, appeals were taken to the United States Supreme Court and dismissed as not present-



ing a substantial question. See 303 U. S. 824, 82 L. Ed. 507 and 1087. These questions were fully considered in these courts and the right of the state to encourage patriotism and honor for the flag as a training for the children in civic virtue and righteousness was upheld and no constitutional rights of the citizens were infringed by these statutes of the said states.

I desire to quote from the opinion of the Georgia Supreme Court ... 184 Ga. at page 583, also pages 585 and 586, as follows:

"The General Assembly of 1935, on March 26, 1935, by resolution provided: 'Whereas, in order to perpetuate the principles of free government and preserve the high ideals upon which this Nation was founded and upon which our constitutions rest, it is necessary that the fundamental principles of patriotism and the ideals of Americanism be inculcated into and cultivated in the minds of our children; and whereas the public school teachers and other employees of this State wield an influence upon the lives and minds of Georgia children second only to that of their parents; and whereas the State has been and is being flooded with propaganda and literature which seek the destruction of the high principles of government which ought to be perpetuated: Therefore, be it resolved by the General Assembly of Georgia (the Senate and House of Representatives concurring), that every teacher in the public schools of this State, whether elementary, high school, college or university, and all other employees of the State or subdivision thereof, drawing a weekly, monthly, or yearly salary, shall, before entering upon the discharge of their duties, take and subscribe a solemn oath to uphold, support, and defend the constitution and



laws of this State and of the United States, and to refrain from directly or indirectly subscribing to or teaching any theory of government or economics or of social relations which is inconsistent with the fundamental principles of patriotism and high ideals of Americanism." (Pages 583 and 584) \* \* \*

After referring to questions for decision and argument the court said:

"With the foregoing contentions we cannot agree. The United States is a democratic country with republican form of government. Code, Sec. 1-407. It is a land of freedom. However, those who reside within its limits and receive the protection and benefits afforded to them must obey its laws and show due respect to the government, its institutions and ideals. The flag of the United States is a symbol thereof, and disrespect to the flag is disrespect to the government, its institutions and ideals, and is directly opposed to the policy of this State." (Page 585) \* \* \*

"Every state in the Union has in its constitution a provision denying to the civil authority the right to control or interfere in any way in matters purely ecclesiastical. Each individual within the jurisdiction of the United States . . . has a right to determine for himself all of those questions which relate to his relation to the Creator of the Universe. No civil authority can coerce him to accept any religious doctrine or teaching, or restrain him from associating himself with any class or organization which promulgates religious teaching. Whether he shall adopt any religious views, or, if so, what shall be the character of those views, and the persons with whom he shall associate in carrying out the



particular views, are all questions addressed to his individual conscience, which no human authority has the right, even in the slightest way to interfere with, so long as his practices in carrying out his peculiar views are not inconsistent with the peace and good order of society. *Mack v. Kime, Swafford v. Keaton, supra.* Under the Georgia Constitution, 'All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience.' " (Page 586).

But the right to worship is not to denounce others who disagree with one's views. Such denunciation is calculated to lead to a breach of the peace.

Civil Liberty is safeguarded by the Federal Constitution in the Fourteenth Amendment, but such liberty secured by law is liberty regulated by law. The word liberty as used in the Fourteenth Amendment to the Federal Constitution such as freedom from all restraints, except such as are imposed by law. In *Re: Marshall* 102 Fed. 323, 324; *Slaughterhouse Cases*, 33 U. S. (16 Wall) 36, 127; 21 L. Ed. 394.

Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will, it is freedom from restraint under conditions essential to the equal enjoyment of the same rights by others. It is then liberty regulated by law. Liberty in this country is not understood to be absolute, but is regulated by law so that each person in society may have equal rights and an equal freedom. It must be then that the constitutional liberty and freedom of speech, of the press, and of religious worship, and freedom of assembly are the rights that the individual has, to be exercised under such regulations as are reasonable and calculated to serve the purpose of organized society, regulated by law.



There must be some tribunal which has authority to decide whether a given statute comes within the prohibition or not and if a prohibition is made, or a regulation is made, within the competent power of the legislature of the state, the individual may not set up his individual judgment against that of the legislature.

There are limits that have been pointed out in numerous cases which show that liberty may be reasonably regulated by law. If the appellant can teach or distribute works which do teach that present government is a demonized or demon-controlled government, contrary to the very right, then there is an end of government and each individual would decide for himself in each case whether his conscience warranted him in disregarding the law or whether he should obey it and, consequently, there would be an end to government.

The literature involved in the cases before the court shows that the works distributed do teach that there is no rightful government now in existence and that such governments as do exist are sinful governments, controlled by demons and that it is a deadly sin to honor the government or those who administer its functions, are sins punishable by eternal damnation and that those who salute the flag would be punished, provided they have taken the covenant to obey the laws of Almighty God.

Under our constitutional system, every person in the same situation is governed by law, a law that must apply equally to everybody and if the appellant can escape, because he has taken a pledge that he conceives to be violated, and may refuse to obey the law, then every other person may refuse to obey it also. The prohibition in the Scriptures against having other gods before Almighty God, or bowing down to



images, applies to all people and it is as sinful for one to engage in idolatry as it is for another.

As pointed out in our brief in *R. E. Taylor v. State*, now before the court, the Supreme Court of the United States has clearly traced the history of the meaning of the constitutional provisions involved in this suit and has held that the rights secured by these amendments do not extend to disregarding laws constitutionally passed by the state, prohibiting actions deemed to be hurtful on reasonable grounds by the legislature. The rule is that the individual's rights thus secured are to entertain his own opinions of religious obligation and religious duty, but that he may not do any act that is prohibited by law nor shall he counsel others to disobey laws enacted within the constitutional power of the state or the nation. The Fourteenth Amendment, while it secures liberty from arbitrary action, it does not deprive the state of the right to judge of actions as distinguished from thought which the state thinks should be prohibited for the common good or for the general welfare.

This brief is supplemental to the brief filed by this office in *R. E. Taylor v. State*, now before the court, and I do not deem it necessary in this case to enlarge upon the argument there made on the constitutional features of the case. Enough has been shown in the evidence to show that the appellant violated the statute. The literature that he distributed, regardless of what his own intent was, was calculated to and did teach that it was wrong and sinful to salute the flag of our country and the jury was warranted by the evidence in finding that he was guilty, because he admitted in his own evidence that he distributed the book involved and the other literature published by the organization which he represented and that his



business was to teach, through distribution of books, the doctrines contained in the book.

When put on the stand, the appellant tried to shield himself from the consequences of violating the act by saying that he left it to each individual to read the book, study the reference to the Scriptures therein contained, and to act on their own judgment. He cannot escape the consequences of violating the act upon any such theory. The evidence shows that he and his wife and son and others were engaged in Warren County and in the City of Vicksburg in distributing this literature and that the appellant had been ordained by a society whose literature he distributed as a minister of their beliefs, and his card showing his authority as such minister is in the record sent up with the transcript.

Appellant takes the position, as I understand his brief, that this is a Christian nation and that the precepts of the Christian Bible are superior to any law of the government and relies upon the Church of the Holy Trinity vs. United States, 143 U. S. 457-472, 36 L. Ed. 226, for this position. The case does not sustain his contention at all for that question was not in any manner involved in the case.

The question before the court was whether or not Chapter 164, 23 Statutes at Large, 332, prohibited the hiring and payment of a Minister of the Gospel and bring him across the seas, the congregation paying his passage into the country. Section 1 of that Act provided as follows:

"That from and after passage of this Act, it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage aliens, any foreigner or foreigners, into the



United States, its territories or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its territories or the District of Columbia."

The court reasoned that the Act did not prohibit the religious congregation from contracting with a foreign Minister of the Gospel and paying his transportation, or part of his salary in order to induce him to come and serve the congregation in a religious capacity. The court announced the purpose of the statute and held that it did not prohibit such act of hiring a minister of the Gospel because it was not within the intendment of Congress in enacting the law to include Ministers of the Gospel although they were hired to render a service to the congregation.

By way of argument and illustration the court, speaking through Justice Brewer traced religious expressions in the Laws and Constitutions and deduced therefrom that a majority of the nation was a religious nation but did not limit that religion to the Christian religion, nor did they declare it beyond the power of Congress to pass a law that would have included Ministers of the Gospel if they had been expressly named. In the concluding paragraph on page 513 of the Official Edition and page 232 of the Law Edition, using this language, it was said:

"Suppose in the Congress that passed this Act some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and



priest; or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent Rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the Legislature used general terms with the purpose of reaching all phases of that evil and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that however broad the language of the statute may be, the act, although within the letter, is not within the intention of the Legislature and therefore cannot be within the statute."

While this case does not sustain counsel's argument it does have important rules of construction of statutes that should be borne in mind when construing Chapter 178, Laws of 1942. For instance, in the third syllabus, it is said:

"Among other things which may be considered in determining the intent of the Legislature is the title of the Act, which may help to interpret its meaning."



In syllabus five it is said:

"Another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."

In the seventh syllabus it is said:

"No purpose of action against religion can be imputed to any Legislature, State or Nation."

When we take the title of Chapter 178, Laws of 1942, it is clear that the Legislature was not dealing with religion, true or false, but was dealing with evils recited in the preamble of the Act. The Title to the Act reads as follows:

"AN ACT TO SECURE PEACE AND SAFETY OF THE UNITED STATES AND STATE OF MISSISSIPPI DURING WAR; TO PROHIBIT ACTS DETRIMENTAL TO PUBLIC PEACE AND SAFETY, AND TO PROVIDE PUNISHMENT FOR SAME."

The rule that the title should give weight to the interpretation of the statute is especially valuable in Mississippi by virtue of the Constitutional provision contained in Section 71 of the Mississippi Constitution 1890, which reads:

"Every bill introduced into the legislature shall have a title, and the title ought to indicate clearly the subject-matter or matters of the proposed legislation. Each committee to which a bill may be referred shall express, in writing, its judgment of the



sufficiency of the title of the bill, and this too, whether the recommendation be that the bill do pass or do not pass."

It should be further given weight to the interpretation of the statute that Section 40 of the Mississippi Constitution 1890 requires members of the Legislature, before entering into the discharge of their duties to take an oath, as follows:

"Members of the legislature, before entering upon the discharge of their duties, shall take the following oath: 'I, ———, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and of the state of Mississippi; that I am not disqualified from holding office by the Constitution of this state; that I will faithfully discharge my duties as a legislator; that I will, as soon as practicable hereafter, carefully read (or have read to me) the Constitution of this state, and will endeavor to note, and as a legislator to execute, all the requirements thereof imposed on the legislature; and I will not vote for any measure or person because of a promise of any other member of this legislature to vote for any measure or person, or as a means of influencing him or them so to do. So help me God.'"

It must be presumed therefore, that the members of the Legislature were familiar with the provisions of the Constitution and that they intended to abide by them and that they did so.

I do not desire to follow counsel through his brief in citing and arguing the force and reasonableness of passages from the Bible quoted by him. If I thought this was a prosecution directed at the freedom of re-



ligious worship, I would not represent the prosecution in trying to sustain a suit so directed. I am strong for the freedom of religion, freedom of speech, freedom of the press, and right of assemblage and discussion of matters affecting the citizenship or to seek redress of grievances within the Constitutional limitations, limited as they are to reasonable legislative regulation, often a right that is given by the Constitution to the individual is subject to reasonable regulation as distinguished from arbitrary legislation, for the Legislature must have power to enact suitable laws to promote the general laws of public safety, public health, and similar things so long as such regulations are reasonable.

Section 18 of the Mississippi Constitution 1890 provides:

"No religious test as a qualification for office shall be required: and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The right hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state."

It will be noted from the language used in this section the rights hereby secured shall not be construed to justify acts of licentiousness, injuries to the morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state. This reservation is implied in all of the provisions guaranteeing the freedom of speech,



of the press, and of worship, whether written in the Constitution or not.

Section 13 of the Constitution provides:

"The freedom of speech and of the press shall be held sacred; and in all prosecutions for libel the truth may be given in evidence, and the jury shall determine the law and the facts under the direction of the court; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted."

It will be noticed in the latter part of this section that if the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. It is clear then that none of the provisions of Chapter 178 abridged any religious freedom when properly understood, but religious freedom is to be exercised in such manner as not to endanger the public safety or injure the public in any way and does not warrant the disobedience of laws enacted within the legislative power. In such cases it must be recognized that all liberties are without substantial value unless there is organized government to give them effect as against encroachment by other individuals or corporations, either public or private. Cases dealing with this subject are too voluminous to analyze in detail but through all runs the doctrine of reason. There is a trail of principle through the forest of precedent. Precedents are guides, and if contrary to principle, should not stand, and the courts recognize this by overruling cases erroneously decided. There is much force in the language used by Judge Sibley of the Fifth Circuit Court of Appeals in the case of *Stone v. Interstate Natural Gas Company*



and Interstate Natural Gas Company v. Stone (2 cases) 103 Fed. (2) 544, affirmed in 84 L. Ed. 442, wherein he said:

"It would be tedious to analyze the cases and impossible fully to reconcile them. The principle of stare decisis in constitutional interpretations has recently received shattering blows in the Supreme Court, and especially in the field of immunities from general taxation. The increasing social burdens assumed by our governments, both state and national, will require increasing and more searching taxation for their support. Any immunity from equal general taxation appears more and more inconvenient and unjust. The recent re-examination of the basis for such immunities has re-examination of the basis for such immunities has resulted in an upheaval. The current of authority has been turned. For the judicial navigator the cases are no longer the beacons marking out a fixed if tortuous channel. He must for awhile fix his eyes upon the Constitution as the Pole Star of his firmament and steer his course rather by principle than by precedent."

In other words, it would be a voluminous and tiresome task to have the Court wade through all of the many cases cited and noted upon the subject of religious freedom, freedom of speech and freedom of the press, but the principle runs through all of them that the rights secured are not without limit but may be regulated in reasonable ways to secure the benefits of government.

Counsel also cites the case of United States v. Carolene Products Company, 304 U. S. 144, 152, 82 L. Ed. 1234. This case deals with the power of the Federal government in its legislative capacity and shows the



extent of governmental power where it is not restricted by specific constitutional limitations. The state has the same power to legislate within its own field where not restricted either by state or Federal Constitutions, and the power is extremely broad and comprehensive. It is held in this case that equal protection does not compel a state to prohibit all like evils or none, but a legislature may hit at an abuse which it has found even though it has failed to strike at another. It is also held in this case in the twelfth syllabus:

"Regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of facts made known, or generally assumed, it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators."

In the thirteenth syllabus it is held:

"Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts **beyond the sphere of judicial notice**, such facts may properly be made the subject of judicial inquiry, and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." (Emphasis supplied).

The Court of course takes judicial notice of the declaration of war upon the United States by Germany, Italy, and Japan and declaration of war upon these nations by the United States and the Allied nations. Facts which the court judicially knows have as much



probative force as proof submitted from the witness stand and, if the facts which the Court judicially knows are sufficient to create a basis of legislation, no proof is needed and none would be permissible as to the facts of which the Court takes judicial notice.

The recent case of *Wickard v. Filburn*, 87 L. Ed. U. S. (Advance) page 57 shows how far legislative power may go in dealing with public needs and that the power can only be restrained by express constitutional provisions or by the necessary implication of express constitutional prohibitions. The state's power in its field, exists to the same degree as the power of the national government in its field, where not restricted by constitutional provisions.

A state may, consistently with the constitutional right of free speech, forbid picketing of the place of business of one who has entered into a contract with an employer of union labor for the construction at another place of a building unconnected with such business. *Carpenters, etc., Union v. Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143. In the third syllabus of the above case it is stated:

"It is not for the Supreme Court of the United States to assess the wisdom of a policy underlying a state law which the state may constitutionally enact."

Where the state and the nation may both enact laws upon the subject and intention of the Congress to exclude the state from asserting their police powers must be clearly manifested before the state statute can be stricken down and impaired. *Allen-Bradley Local, etc., v. Wisconsin Employment Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154.

Counsel in his brief, in this case, took rather a dis-



paraging attitude toward the State of Mississippi and the affirming Judges who passed upon these cases as though this state was the only state in which the prosecution against parties, claiming to be Jehovah Witnesses, had violated local laws under their untenable claim that they cannot be restricted of their religious liberties by state laws, and that man-made laws can not rightfully control them, I only desire to say that from the many cases cited in his brief and in the news reports of the press and radio it appears that there have been many prosecutions against them in many states. Some may be without merit. Nevertheless, the fact exists that such prosecutions and legislation is not limited to the state of Mississippi. There is no reason to assume that Mississippi is hostile to any religion because all religions are tolerated so long as they abide the law, but when a person deliberately assails all organized religion and all organized governments they have little right to expect a toleration which they do not give. Mississippi is in what is sometimes called the "Bible belt," where the Bible is highly esteemed and constitutes the guiding principles of religion and moral excellence, and every kind of denomination may freely worship in its own way; but when the church of an individual is assailed as being "Demon controlled" and "deceptive" in its purposes and that its ministers are "deceivers of the people" a spirit of resentment naturally arises because most people look upon their church as something holy and which should not be denounced, and look upon their religious leaders as being of the most holy and best type of men. They do not pretend that men do not err in religion but to have them denounced as these pamphlets and books and phonographs do, naturally results in occasional violence. The better class of citizens think the law ought to deal with such matters as



tend to disturb the peace and promote violence. This is shown by the testimony of the Chief of Police in the case of *Betty Benoit v. State*, where a majority of the citizens of the town was calling on the law to prevent disloyalty and denunciatory publications about the nation and the flag. I do not justify all that was done. It is not my purpose to do that in any case where the officers exceed the proprieties of their office. Nevertheless, the acts of the appellants tend to promote violence and some cases have been reported where they have been treated with rough methods. This is a good reason that such laws as we have now before the court should be upheld. It must be remembered that all people do not live in large cities with ample police protection and ample law enforcement.

Counsel, also in his brief, seemed not to understand and to belittle the argument before the Mississippi Supreme Court and the Court's holding in the controlling opinion, that by reason of having two races living together of approximately equal numbers and having degrees of race pride and race prejudice, required or made pertinent legislation to prevent, during the war period, disturbances of racial character.

The Court in construing the statutes must consider the situation and conditions which exist at the time and prior to the enactment of legislation as a reasonable basis for enacting it.

The Court judicially knows that prior to the Civil War a system of slavery existed in Mississippi and in other Southern States and that often harsh and tyrannical laws were enacted to make the system effective, which laws were harsh and often unjust; that this system of slavery and its consequences brought on the



Civil War in which the South was defeated after a protracted and exhaustive struggle which consumed its resources almost to the uttermost and reduced its man power by many thousands; that after the war was ended Reconstruction Government was set up in the state, administered by appointees from the National government using military police to carry out these policies. Negroes recently made free but ignorant and without civil fitness were given the right of suffrage and, in fact, dominated. In taking the state oath they had little comprehension of civic policies or governmental obligations. It is said that there were more men enlisted in the Union Army from Mississippi than there was in the Confederate Army. Most of those who entered the Union Army were slaves and fought against their recent masters. Naturally, these things engendered resentment, prejudice and a multitude of things not designed to the healthful growth and progress of the state. The generation which then lived have all passed to their rewards and the descendants of the third and fourth generations are now moving and controlling factors in life in this state. For a period of more than fifty years these two races have lived together in harmony, although the colored race has had but little participation in shaping and administering the laws of the state. Naturally, it is easy to stir their passions and resentments. A time of war is a period where violence would likely happen should agitators, either domestic or foreign, be permitted to create a spirit of disunity and disloyalty to the country. The present generation in the South realize that slavery was a mistake; that it was a frightful wrong and are glad that all men in this state are free. They realize that it was a mistake to attempt to secede and in the present Constitution (1890) there was adopted the principles of the Thir-



teenth Amendment. See, Section 15, Constitution 1890, which reads,

"There shall be neither slavery nor involuntary servitude in this state, otherwise than in the punishment of crime, whereof the party shall have been duly convicted."

and solemnly renounced the right of secession. See, Section 7, Constitution 1890, which reads as follows:

"The right to withdraw from the Federal Union on account of any real or supposed grievance, shall never be assumed by this state, nor shall any law be passed in derogation of the paramount allegiance of this state to the government of the United States."

Furthermore, the state recognized the negro as a citizen and has the right to appeal from registration not granted. See, Section 248, Constitution 1890, which reads as follows:

"Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

I am fully aware that there has been more excoriation of the state in the North than there should be about the great problems confronting the people of this state. The Reconstruction measures have been in a general way described by Claude Bowers in his book **THE TRAGIC ERA** and by Judge Stryker of New York in his **LIFE OF ANDREW JOHNSON**, but full description of the terrible conditions which the South had to contend with are not known over the country, but those who lived in that period of time have written in local historical publications much of the his-



tory and its details. See, **GARNER'S HISTORY OF RECONSTRUCTION; RECONSTRUCTION IN EAST AND SOUTHEAST MISSISSIPPI** by Captain W. H. Hardy, 8 Mississippi Historical Publication, pp. 137 to 151; also, 7 Mississippi Historical Publication, pp. 199 to 215, and on the same subject in Vol. 4, Mississippi Historical Publication, pp. 105 to 132; **SUFFRAGE AND RECONSTRUCTION IN MISSISSIPPI** by Honorable Frank Johnson, former Attorney General of Mississippi, 6 Mississippi Historical Publication, pp. 141 to 244; **FROM ORGANIZATION TO OVERTHROW OF PROVISIONAL GOVERNMENT IN MISSISSIPPI** by Captain J. S. McNeilly, 1 Mississippi Historical Publication, Centennial Edition, pp. 9 to 403; **CLIMAX AND RECONSTRUCTION IN MISSISSIPPI** by Captain J. S. McNeilly, 12 Mississippi Historical Publication, pp. 283 to 473; **WAR AND RECONSTRUCTION IN MISSISSIPPI** by Captain J. S. McNeilly, 2 Mississippi Historical Publication, Centennial Edition, pp. 165 to 568, published in 1918. There are numerous articles in the Mississippi Historical Publication on reconstruction in various counties but I will not set them forth. I cite these matters for the purpose of showing the tragic conditions in which Mississippi was involved between 1865 and 1890 and by comparison a relative harmony between the races since 1890 so that those who have the will may read and know the truth. This background is the condition which reasonably warrants the enactment of the present statute, because, if the wrongs of the past, real or fancied, are dug up and paraded before the two races in Mississippi during the war period it would create a condition which might be very dangerous, especially should the enemy with which we are at war be able to land on our shores or send its emissaries throughout the country, including this



state, to stir up strife. The best elements of both races are trying to work harmoniously to make conditions better and life more secure in the state. In 1923 the State Bar Association published a pamphlet against lynching (which the most prominent citizens of the white race in the South deplore), and ten thousand copies of this pamphlet were distributed to appropriate persons throughout the state and had a salutary effect in an educational way upon the subject. The South, we feel, has less sympathy in its troubles with these problems than it should have, but we have tried to secure justice and liberty for all; and education and industry are secured and promoted as best they may be under the conditions from which we are trying to emerge.

Counsel's reference in his argument that the state offered no proof of a clear and present danger existed to justify its laws. I think that sufficient answer to this is that the Court judicially knows that war itself is a present danger and that we must make many sacrifices and forego many rights to win the war and preserve our liberties after peace shall come. Hundreds of ships have been sunk and we are assured that the struggle will be long and bitter, although we are confident that we will win but it will be only by sacrifices and that these sacrifices must be made by all of our population.

I desire to have this brief and the brief in the R. E. Taylor case considered as brief in the case of Betty Benoit v. State, a companion case, to be decided along with these cases.

Respectfully submitted,

*Wick L. R.*

ATTORNEY GENERAL

*Godfrey*

ASSISTANT ATTORNEY GENERAL



**C E R T I F I C A T E**

I, Geo. H. Ethridge, Assistant Attorney General, in and for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing brief to Honorable Hayden Covington, Attorney of Record for the Appellant, at his post office address at 117 Adams Street, Brooklyn, New York.

**APR 3 1943**

This the \_\_\_\_\_ day of \_\_\_\_\_ 1943.

*Geo H Ethridge*  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL



## APPENDIX "A"

### Chapter 178, Laws of 1942:

Section 1. That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the state of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatred, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag, or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

\* \* \*

Section 5. Except as to cases then pending in court this act shall expire after the duration of the present war.



## APPENDIX "B"

## Chapter 155, Laws of 1942:

Section 1. \* \* \*, That all boards of trustees of tax supported free public schools and all other state supported schools of the state of Mississippi, are authorized and hereby directed to instruct and require teachers under their control to have all pupils repeat the oath of allegiance to the flag of the United States of America at least once a week during the school year. The oath of allegiance required is as follows:

"I PLEDGE ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA, AND TO THE REPUBLIC FOR WHICH IT STANDS, ONE NATION, INDIVISIBLE, WITH LIBERTY AND JUSTICE FOR ALL."

Section 2. That the state superintendent of education and through him the county superintendents of education shall acquaint all boards of trustees of free public schools with the provisions of this act and see that same are complied with as one of the duties of said trustees.

Section 3. That this act will in no way conflict with or diminish the authority or duties of any board of trustees or school officials in regard to the teachings of citizenship, patriotism, Americanism, or respect for the flag as required by section 6630, section 6544 or other sections of the 1930 Mississippi code or supplements thereto. This act merely places an additional duty on the above mentioned authorities.



## APPENDIX "C"

## Chapter 59, Laws of 1935:

\* \* \*

Section 1. \* \* \* That section 6544 of the Mississippi Code of 1930 be and the same is hereby amended so as to read as follows:

"Section 6544. The flag of the United States shall be displayed at every school building in the state in close proximity to the school building by being hoisted on a pole not less than thirty feet high, during all times the weather will permit without damage to the flag, and the trustees of every school building shall provide for the flag and its display.

Section 2. That every school within the state shall arrange a course of study concerning the flag of the United States, which said course of study shall include a history of the flag and what it represents, and the proper respect therefor.



## APPENDIX "D"

U.S.C.A. Anno. 1942 Supplement, Sections 176-177, 56 Statutes 379, Chapter 435, Sections 4 and 5:

Section 176. No disrespect should be shown to the flag of the United States of America; the flag should not be dipped to any person or thing. Regimental colors, state flags, and organization or institutional flags are to be dipped as a mark of honor.

(a) The flag should never be displayed with the Union down save as a signal of dire distress.

(b) The flag should never touch anything beneath it, such as the ground, the floor, water or merchandise.

(c) The flag should never be carried flat or horizontally, but always aloft and free.

(d) The flag should never be used as drapery of any sort whatsoever, never festooned, drawn back, nor up, in folds, but always allowed to fall free. Bunting of blue, white and red, always arranged with the blue above, the white in the middle, and the red below, should be used for covering a speaker's desk, draping the front of a platform, and for decoration in general.

(e) The flag should never be fastened, displayed, used or stored in such a manner as will permit it to be easily torn, soiled, or damaged in any way.

(f) The flag should never be used as a covering for a ceiling.

(g) The flag should never have placed upon it, nor on part of it, nor attached to it any mark, insignia,



letter, word, figure, design, picture, or drawing of any nature.

(h) The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.

(i) The flag should never be used for advertising purposes in any manner whatsoever. It should not be embroidered on such articles as cushions or handkerchiefs and the like, printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard; or used as any portion of a costume or athletic uniform. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

(j) The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning. June 22, 1942, c. 435, Stat. 379.

Section 177. During the ceremony of hoisting or lowering the flag or when the flag is passing in a parade or in a review, all persons present should face the flag, stand at attention, and salute. Those present in uniform should render the right-hand salute. When not in uniform, men should remove the headdress with the right hand holding it at the left shoulder, the hand being over the heart. Men without hats merely stand at attention. Women should salute by placing the right hand over the heart. The salute to the flag in the moving column should be rendered at the moment the flag passes. June 22, 1942, c. 435, Sec. 5, 56 Stat. 380.